

Appln No. 10/820,480
Amdt date May 27, 2008
Reply to Office action of December 28, 2007

REMARKS/ARGUMENTS

In the Office action dated December 28, 2007, the Examiner maintained the rejection of claims 1-30 under 35 U.S.C. §103(a) as allegedly obvious over Moaddeb, et al. (U.S. Patent No. 6,405,078) in view of Skalsky, et al. (U.S. Patent No. 4,844,099). In maintaining this rejection, the Examiner continues to assert that "it can be fairly asserted that the non-conductive porous material is configured to avoid 'substantial' contact with the tissue." Office action, page 3. Such a conclusory statement without explanation is insufficient to support the obviousness rejection. *See KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007)("KSR") (stating "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")(citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Examiner's conclusory statement fails to describe how or where Skalsky teaches or suggests that the non-conductive porous material is configured to avoid substantial contact with the tissue, and fails to describe any motivation or suggestion in Skalsky to configure the non-conductive porous material to avoid such contact. As such, the Examiner's continued rejection of claims 1-30 based on the conclusory statement is improper.

Moreover, Applicant has demonstrated in the responses filed on August 6, 2007 and October 31, 2007 that Skalsky fails to teach or suggest that the non-conductive porous material is configured to *avoid* substantial contact with the tissue, as claimed. Quite to the contrary, Skalsky highlights the need to *maintain* substantial contact of the porous material with the tissue. In particular, Skalsky emphasizes the need for secure and reliable attachment of the electrode to the heart wall. See, e.g., column 2, lines 5-33. To accomplish this, the porous characteristics of the Skalsky implant are used to facilitate attachment to the cardiac tissue by promoting tissue ingrowth. Column 2, line 54 to column 3, line 8. Since the porous substrate disclosed in Skalsky is used to promote tissue ingrowth and ensure secure and reliable attachment of tissue to the device, it *cannot* be "fairly asserted" that the porous substrate is configured to avoid substantial contact with the tissue. Rather, it can only be "fairly asserted" that the porous substrate in

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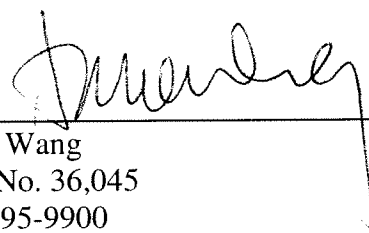
Skalsky is adapted to maximize contact with tissue in order to effectively promote tissue ingrowth and secure, reliable attachment of the device to the tissue. If the porous substrate in Skalsky were configured to *avoid* substantial contact with the tissue, tissue ingrowth could not occur, and the device could not be attached to the tissue, as required by Skalsky. As Applicant has shown that Skalsky fails to teach or suggest that the porous material is configured to avoid substantial contact with tissue, and the Examiner has failed to specify any basis for the continued assertion that "it can be fairly asserted that the non-conductive porous material is configured to avoid 'substantial' contact with the tissue," Applicant submits that the continued obviousness rejection is improper. Accordingly, Applicant submits that claims 1-30 are allowable over Moaddeb and Skalsky.

Claims 1-30 remain pending in this application. In view of the above remarks, Applicant submits that all of pending claims 1-30 are in condition for allowance. Applicant therefore respectfully requests reconsideration and a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact Applicant's counsel at the number indicated below.

Respectfully submitted,

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